IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.140 OF 2004

The Oriental Fire and General Insurance Company Ltd. ..Appellant.
Vs.
Smt. Kalpana Shital Nagrani & Ors. ..Respondents.

Mr.J.S.Chandnani, adv. for the Appellant.
Mr.R.S.Khadapkar, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : JULY 27, 2007.

P.C.:

1. Heard the learned counsel for the appellant, insurance company and the respondent no.6.

2. To state in brief, the Stage Carriage Bus of the respondent no.6 Pune Municipal transport was involved in an accident wherein one Sheetal Nagrani, on a moped, was killed. Respondent nos.1 to 5 filed a motor accident claim petition claiming compensation from the respondent no.6 as well as the present appellant, being the insurer of the vehicle. The claim was decreed to the extent of Rs.5 lakhs and the appellant/the respondent no.6 as well as the driver were directed to pay compenstion of Rs.5 lakhs with interest and cost jointly and severally. That judgment was challenged by the present appellant in Appeal No.867 of 1995 contending that liability of the present appellant was

limited to Rs.50,000/- only in respect of third party. As that question was not addressed to in the judgment, the appeal was allowed limited to the said point and the matter was remanded to the claims tribunal with the direction to decide whether the liability of the present appellant was limited. After hearing the parties, the learned claims tribunal rejected the contention of the present appellant by the judgment dated 25th March, 2003. The said judgment holding the present appellant jointly and severally liable to pay the whole of the compensation amount is challenged in the present appeal.

3. I have carefully perused the impugned judgement. The impugned judgment reveals that the present appellant had issued a notice to the respondent no.6 to produce the original policy of insurance but the respondent no.6 replied that the original policy was never issued by the insurance company therefore, it could not be produced. Thereafter the appellant produced Exhibit 80 purporting to be true copy of the insurance policy. However, the learned Tribunal noted that the Insurance Company had examined Ashok Shesrao Patki as a witness. The learned Tribunal noted that the copy of the insurance policy was signed by one Dafalapurkar, who was not examined before the Court. Further, it was noted that the master copy or the

docket copy of the insurance policy on the basis of which true copy Exhibit 80 was prepared was also not produced before the Court for the comparison of the copy. In such circumstances, evidence of witness Ashok Shesrao Patki was not found reliable. The learned tribunal found that the insurance company had failed to produce the relevant record to prove that it's liability was limited.

4. The learned counsel for the appellant invited my attention to the certificate of the insurance indicating that the third party risk was covered. However, this certificate of Insurance Company does not contain all the terms of the contract between the parties nor discloses how much premium was paid for the purpose of taking the policy and whether the premium paid was sufficient only for limited liability and not more than that. In absence of the original record and particularly the original insurance policy as well as the payment of premium, it is difficult to find fault with the impugned judgment. Burden was on the insurance company to prove that its liability is limited, which it has failed to discharge.

5. In view of the above circumstances, there is no merit in the appeal. Therefore, appeal stands dismissed summarily.

[J.H.BHATIA, J.]